

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

KIMBERLY CHEVELLE FORD  
d/b/a KCF Express Living Trust,

Plaintiff,

VS.

CEO ROBERT S. KEANE d/b/a Vistaprint,  
USA, Inc. d/b/a Vistaprint.Com.Inc. d/b/a  
Cimpres USA, Inc. and John and Jane Does  
1-15 all whose true names are unknown,

Defendants.

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CIVIL ACTION NO. SA-23-CV-1491-FB

**ORDER ACCEPTING REPORT AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

The Court has considered the Report and Recommendation of United States Magistrate Judge filed in the above-captioned cause on January 15, 2025 (docket #21), concerning Plaintiff Kimberly Chevelle Ford's failure to timely serve the Defendant within the time allowed by Rule 4(m) of the Federal Rules of Civil Procedure. According to the CM/ECF system, the Report and Recommendation sent by certified mail, return receipt requested, was received by the Plaintiff on January 21, 2025 (docket #24). To date, the docket reflects no objections to the Report and Recommendation have been received.<sup>1</sup>

In the Report, United States Magistrate Judge Henry J. Bemporad recommends that this case should be dismissed without prejudice for failure to timely serve the Defendant pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Magistrate Judge Bemporad explains that the 90-day

<sup>1</sup> Any party who desires to object to a Magistrate's findings and recommendations must serve and file his, her or its written objections within fourteen days after being served with a copy of the findings and recommendation. 28 U.S.C. § 635(b)(1). If service upon a party is made by mailing a copy to the party's last known address, "service is complete upon mailing." FED. R. CIV. P. 5(b)(2)(C). If service is made by electronic means, "service is complete upon transmission." *Id.* at (E). When the mode of service is by electronic means, three days are no longer added to the time period to act after being served. *See Heverling v. McNeil Consumer Pharmaceuticals, Co.*, Civil Action No. 1:17-CV-1433, 2018 WL 1293304 at \*2 n.3 (M.D. Pa. Mar. 13, 2018) ("On April 28, 2016, the Supreme Court adopted changes to the Federal Rules of Civil Procedure. In pertinent part, the Court amended Rule 6(d) to remove 'electronic means' as a mode of service triggering an additional three days to act when a responsive period commences upon service. *See* FED. R. CIV. P. 6, advisory committee's note to 2016 amendment. The amendments took effect on December 1, 2016.").

deadline for service expired on November 6, 2024. Because no proof of service was made by that deadline, a Show Cause Order was issued requiring a response by December 20, 2024. This second deadline also passed without any filing by the Plaintiff. Magistrate Judge Bemporad explains that “Plaintiff has never sought the issuance of the summonses in this case, and she has not filed any pleading or other document with the Court since August 8, 2024, when her complaint was filed.” Report, docket #21 at page 2.

Because no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review. *See* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”). The Court has reviewed the Report and finds its reasoning to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989). The Recommendation shall therefore be accepted pursuant to 28 U.S.C. § 636(b)(1) such that Plaintiff’s case should be dismissed without prejudice for the failure of timely service pursuant to Federal Rule Civil Procedure 4(m).

Accordingly, it is hereby ORDERED that the Report and Recommendation of United States Magistrate Judge filed in this cause on January 15, 2025 (docket #21), is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Plaintiff’s case is DISMISSED WITHOUT PREJUDICE for the failure of timely service pursuant to Federal Rule of Civil Procedure 4(m). Motions pending, if any, are also DISMISSED, and this case is now CLOSED.

It is so ORDERED.

SIGNED this 26th of February, 2025.



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FRED BIERY  
UNITED STATES DISTRICT JUDGE